IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

RSA.No. 210 of 2007()

AS.26/1996 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.27/1993 of MUNSIFF COURT, MAVELIKKARA

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APPELLANTS/ APPELLANTS/ DEFENDANTS:

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1. KARTHIYANI, W/O.NARAYANAN,
   PARUMALASSERIL VADAKKETHIL VRINDAVANAM,
   PONAKAM MURI, THEKKEKARA VILLAGE,
   MAVELIKKARA.

2. N.C. BOSS & BOSS NARAYANAN,
   PARUMALASSERIL VADAKKATHIL VRINDAVANAM,
   PONAKAM MURI, THEKKEKARA VILLAGE,
   MAVELIKKARA.

3. N. SUBASH BABU @ BABU NARAYANAN
   PARUMALASSERIL VADAKKETHIL VRINDAVANAM,
   PONAKAM MURI, THEKKEKARA VILLAGE,
   MAVELIKKARA.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENT/RESPONDENT/ DEFENDANT:

M.E.THOMAS, MANALIL-A, VILLA
MUNICIPAL WARD-18, PONAKAM MURI,
THEEKEKARA VILLAGE, MAVELIKARA.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.210 OF 2007

Dated 14th March 2007

J U D G M E N T

Defendants in O.S.27/93 on the file of Munsiff court, Mavelikara are appellants. Respondent is the plaintiff. Respondent filed the suit seeking decree for declaration of right of easement and for permanent prohibitory injunction. Case of respondent was that plaint A schedule property belongs to him as per sale deed No.1945/83 of Mavelikara S.R.O. And plaint B schedule property belongs to first appellant and other appellants are their children and C schedule way passes through B schedule property and it is the only way to plaint A schedule property and it is being enjoyed by respondent and his predecessors openly, peacefully and uninterruptedly and as of right and as an executent plaintiff has prescribed right of way by easement of prescription. Respondent contended that he has right of easement by prescription over plaint C schedule way and appellants are not entitled to obstruct the same. Appellants filed a written

statement contending that the old way is on the west of C schedule property and it starts from south western corner of A schedule and proceeds straight to the puramboke road on the south and suit was laid after defacing the traces of that way. It was contend that on getting notice of the proceedings first appellant filed O.S.56/93 for a decree to restore the way passing through the west of C schedule property and that is the way available to the respondent and he is not entitled to the decree sought for. Learned Munsiff framed necessary issues. On the evidence of Pws.1 and 2, Exts.A1 to A4 and Exts.C1 to C3, learned Munsiff upheld the case of respondent and granted a decree for declaration that respondent has a right of way by easement by prescription over plaint C schedule property and appellants are not entitled to interfere with the same. The suit was decreed. O.S.56/93 filed by first appellant was separately tried and that suit was dismissed by separate judgment. Challenging the decree granted in O.S.27/93 appellants filed A.S.26/96 before Additional District Court, Mavelikara. Challenging the decree in O.S.56/93 first appellant filed A.S.18/99. It was transferred to Additional District court, Mavelikkara from District court to

enable joint hearing of the appeal with A.S.26/1996. But learned District Judge disposed A.S.26/96 separately confirming the decree and judgment passed by learned Munsiff. It was challenged before this court in R.S.A.542/04. This court set aside the decree in A.S.26/96, holding that learned Additional District Judge should have heard A.S.26/96 along with A.S.18/99. Hence without considering the merits A.S.26/96 was remanded for fresh disposal along with A.S.18/99. After remand learned counsel appearing for appellants in A.S.18/99 did not press that appeal and it was dismissed as not pressed. Learned District Judge thereafter heard A.S.26/96 and as per judgment dated 28/2/1996 dismissed the appeal confirming the decree and judgment passed by learned Munsiff. This appeal is filed challenging the judgment in A.S.26/96.

2. Appellants would contend that their counsel did not act properly and exceeded the authority and the counsel was not authorised to not press A.S.18/99 and therefore, the decree and judgment passed by learned District Judge are to be set aside and appeal is to be remanded back to learned District Judge for fresh disposal.

3. Learned Senior counsel appearing for appellant

was heard. Learned Senior counsel submitted that the learned counsel who appeared for appellants before the District court did not act on the advice of appellant and the counsel was not authorised to not press the appeal A.S.18/99 and therefore dismissal of A.S.26/96 on the ground of dismissal of A.S.18/99 is erroneous and learned District Judge is to be directed to re-hear the appeal on merits.

4. Judgement in A.S.18/99 was not challenged and it has become final. Therefore, no purpose will be served by remanding A.S.26/96 to Additional District Judge once again. The very case of appellants was that the way available to the respondent is the way which was set up by first appellant in her suit O.S.56/93. Learned Munsiff on the evidence in O.S.27/93 as well as in O.S.56/93 found that there is no such way and the only way available in plaint C schedule way. That decision has now become final. Case of the appellants in this appeal is also that the way available to respondent is not plaint C schedule way but the way which lies to the west of C schedule property. That plea is unsustainable in view of the final decision in O.S.56/93. Courts below on the evidence found that respondent is entitled to a right of way by easement of

prescription over plaint C schedule way. No substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.